IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

RCRev..No. 247 of 2007

RCA.87/2006 of RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM
RCP.128/2005 of RENT CONTROL COURT, ERNAKULAM

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REVISION PETITIONER/APPELLANT/RESPONDENT:

SURYA KUMARI KUNJAMMA, AGED 56 YEARS,
D/O. SAVITHIRIKUNJAMMA, PALATHARA
HOUSE, PUTHUKKALVATTOM P.O.,
ELAMAKKARA.

BY ADV. SRI.SHAJI P.CHALY

RESPONDENT/RESPONDENT/PETITIONER:

BINU JACOB, AGED 36 YEARS,
W/O.JOHN.T.SAM, 43/2432 A,
PALATHARA HOUSE, S.R.M.ROAD,
ERNAKULAM NORTH.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No. 247 of 2007

ORDER

Balachandran, J.

Tenant is the revision petitioner. Respondent filed R.C.P.No.128/05 before the Rent Control Court, Ernakulam for an order of eviction against the petitioner invoking grounds under Sections 11 (2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). The Rent Control Court allowed eviction under Section 11(2)(b) of the Act, but rejected the claim for eviction under Section 11(3) of the Act. The petitioner/tenant assailed the order of eviction passed under Section 11(2)(b) of the Act before the Rent Control Appellate Authority, Ernakulam filing R.C.A.No.87/06. The appellate authority dismissed the appeal concurring with the findings of the Rent Control Court and confirming the eviction ordered by the Rent Control Court

under Section 11(2)(b) of the Act.

2. It is vehemently contended before us by the learned counsel for the petitioner, relying also on the decision of the Apex Court in **Devi Das v. Mohan Lal** (AIR 1982 SC 1213), that the authorities below went wrong in not entering a finding as regards the contention of the petitioner that there is no landlord/tenant relationship between the respondent and the petitioner and that the sale deed executed by her in favour of the respondent is actually a sham document. The contention is so advanced before us by the learned counsel for the petitioner on the ground that objection had been filed before the Rent Control Court resisting eviction contending that Sale Deed No.3554/03 of Sub Registry Office, Edappilly executed by the petitioner in favour of the respondent in relation to the scheduled building was never intended by the parties to be acted upon as a sale deed, but, was intended only as security in respect of a loan transaction

between the respondent and husband of the petitioner to the tune of Rs.1,50,000/-; that the interest in relation to the loan transaction was fixed at Rs.24,000/- per month and that was being paid regularly till July 2004; that the respondent was bringing into existence a rental deed making use of the blank stamp papers as also other papers got signed from the petitioner by way of security; that the said rent deed (Exhibit A3) is one fabricated by the respondent and that in the circumstances, the petitioner, in law, is the owner of the scheduled building and is not bound to make payments of rents as alleged and that she is not liable to be evicted from the scheduled building resorting to the proceedings under the Rent Control Act.

3. We see absolutely no merit in the contention advanced. It is the admitted case that the petitioner herself has executed Sale Deed No. 3554/03 of Sub Registry Office, Edappilly in favour

of the respondent in relation to the scheduled building and premises, which at least, professes to transfer the said property and building to the respondent. It is seen that other records are also produced by the respondent to establish her contention that the sale deed has actually taken effect and that she is paying the tax, etc. in respect of the scheduled building. It does not lie in the mouth of the petitioner, who has executed sale deed in favour of the respondent in respect of the scheduled building and premises, to contend in rent control proceedings that despite execution of the sale deed, she continues to have ownership of the building and is not a tenant and is not liable to pay rent as per the rent deed, prima facie, executed by her in favour of the respondent. If at all the petitioner has got a contention that the sale deed executed in favour of the respondent was by way of collateral security in relation to the loan transaction and is not expected to operate as

transfer of title over the building it is for her to institute appropriate suit and to get a declaration in that behalf.

4. The decision relied on by the learned counsel for the petitioner is one dealing with an entirely different situation, where, the contention raised by the tenant was that the transfer in favour of the person, who has instituted eviction proceedings against him had not actually obtained ownership over the building, but that the document was a sham one just to enable the petitioner therein to seek for an eviction and obtain an order of ejectment against him from the premises in dispute. It was in the above fact situation that the Apex Court observed that the trial court was bound to record a finding on the question whether the sale of the building to Mohan Lal, who instituted the eviction proceedings, was a bona fide transaction or only a paper transaction. However, in the circumstances of the case, though

there is no merit in the contention advanced on behalf of the petitioner, we leave open the contention of the petitioner that the sale deed executed in favour of the respondent was being executed as a collateral security to be decided in appropriate proceedings to be instituted by the petitioner, if so advised.

Accordingly, we dispose of this revision confirming the order of eviction passed concurrently by the authorities below under Section 11(2)(b) of the Act with liberty to the petitioner to get the order vacated under Section 11(2)(c) of the Act, depositing all rents in arrears with interest etc. as statutorily provided. It is made clear that the finding regarding landlord/tenant relationship in this proceedings, on the basis of the sale deed and the rent deed executed by the petitioner in favour of the respondent, shall not operate as res judicata, if at all appropriate suit is instituted by the petitioner for a declaration

to the effect that the sale deed executed by her in favour of the respondent is not one intended to operate on the title over the scheduled building and premises, but was being executed only by way of collateral security.

(J.B.Koshy, Judge)

31st July, 2007

(K.P.Balachandran, Judge)

tkv